

REMARKS

Summary of the Office Action

Claims 1-61 are pending in the application.

An election of species requirement has been imposed between the following species:

- Species I, corresponding to FIGS. 1-2;
- Species II, corresponding to FIGS. 3A and 3B;
- Species III, corresponding to FIG. 4A;
- Species IV, corresponding to FIG. 4B;
- Species V, corresponding to FIG. 5A;
- Species VI, corresponding to FIG. 5B;
- Species VII, corresponding to FIG. 5C;
- Species VIII, corresponding to FIG. 5D;
- Species IX, corresponding to FIG. 6A;
- Species X, corresponding to FIG. 6B;
- Species XI, corresponding to FIG. 7A-9;
- Species XII, corresponding to FIGS. 10A-10C;
- Species XIII, corresponding to FIGS. 11A-11C; and
- Species XIV, corresponding to FIG. 12.

The Examiner has found claim 1 to be generic and has determined the species are independent or distinct because they contain claims directed to independent or distinct species.

Applicants' Response

Applicants respectfully traverse the restriction requirement.

"Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why each invention *as claimed* is either independent or distinct from the other(s); and (B) the reasons why there would be a serious burden on the examiner if restriction is not required." MPEP 808.

It is respectfully submitted that Office Action fails to clearly identify each of the disclosed species to which the claims are to be restricted as required. See MPEP 809.02(a). For example, Figs. 4A and 4B are identified as separate species when they are both end views of the device of Fig. 2. See [0019] Similarly, Figs. 5A-C are identified as corresponding to separate species when they depict successive steps in a method for making the device of Fig. 2. See [0020]. It is not clear how end views of a device can be separate species or how steps in a process for making a device can be separate species.

In addition, the Office Action does not provide a reason for holding that the inventions as claimed are either independent or distinct. The Office Action merely sets forth the circular conclusion that "the species are independent or distinct because they contain claims directed to independent or distinct species." A mere statement of conclusion is inadequate. MPEP 808.01.

Lastly, the Office Action does not provide any reasons "why there would be a serious burden on the examiner if restriction is not required" as required. See MPEP 808.

In view of the foregoing discussion, it is respectfully requested the restriction requirement be withdrawn.

Election

Applicants elect the species corresponding to FIGS. 1 and 2, for initial examination. Claims 1, 2, 5-14, and 17-19 correspond to the elected species.

Conclusion

In view of the foregoing remarks, Applicants respectfully submit that the present application is now in condition for allowance. An early and favorable response is earnestly requested.

Dated: May 2, 2007

Respectfully submitted,

/MJDeHaemerJr#39164/  
Michael J. DeHaemer, Jr.  
Reg. No. 39,164  
Attorney for Applicants

LUCE, FORWARD,  
HAMILTON & SCRIPPS, LLP  
11988 El Camino Real, Ste 200  
San Diego, California 92130  
Tel.: (858) 720-6340  
Fax : (858) 350-3586

3811400.3